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REPORT OF A SPECIAL COMMITTEE

OF THE

National Civil-Service Reform League.

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1900.

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## Report of the Committee on Access to the Records of the Civil Service Commission.

*To the National Civil Service Reform League:*

SOME two weeks after the President's order of May 29th, 1899, the United States Civil Service Commission, for the first time in its history, refused, by a vote of two to one (its President, Mr. Procter, dissenting and stating his reasons for dissent in a carefully prepared and out-spoken minute) to permit access to its records to a representative of the League, for the rather vague reasons that to grant this "would be against public policy and not in the interests of the public service." The League, represented in this instance by the Secretary of the Civil Service Reform Association of the District of Columbia, had asked for data with reference to reported violation of the rules in the Appraiser's Department at New York, to removals at certain of the larger Post Offices and Custom Houses, and to the nominations made by the Secretary of the Treasury for non-competitive examinations under the amended rules of July 27, 1897.

Why a disclosure of these matters should have been regarded as peculiarly impolitic at that particular time can be matter of conjecture only, but after some four months of intermittent correspondence, and a hearing given the Secretary of the League in the latter part of October, 1899, access was again granted to all such records as the League had ever desired to inspect. The decision of the Commission was set forth in the following letter:

UNITED STATES CIVIL SERVICE COMMISSION.

WASHINGTON, November 2, 1899.

MR. GEORGE MCANENY,

SECRETARY NATIONAL CIVIL SERVICE REFORM LEAGUE.

SIR:

In response to your communications of October 7 and 30, you are informed that the Commission will allow an agent of your League access to the records of the Commission as requested by you, as follows:

1. Figures and statistics relative to the operation of the civil service act and rules as derived from the periodical reports of appointing officers.
2. The names of persons appointed, promoted or transferred to, or reinstated in, or removed or resigned from positions in the classified service.
3. Files relating to investigations that have been completed or closed touching on the operation of the civil service act and rules,—with the modification that the request shall specify the particular file desired, and that such file shall be submitted to the Commissioners for their approval before access is permitted. This restriction is made for protection of employees and others who may have written to the Commission in confidence.
4. The minutes of the Commission kept in pursuance of section 2 of the civil service act.

Very respectfully,

JOHN R. PROCTER, *President.*

Thereupon the League continued its investigations for about a month, and, in the Spring of the present year, resumed them, until it had ascertained and tabulated facts which sufficiently showed, *inter alia*, the practical results of the President's order of May 29th, 1899, from its date to January 1st, 1900. For reasons set forth in our second letter hereinafter contained, it was subsequently determined to bring the tabulation of these results down to May 29th, 1900; so as to portray the working of the order in practice during a full year; but, shortly after this purpose on the League's part became apparent, the denial of access was repeated. On July 14 a new minute was adopted closing *all* records to any except the Commission's own employees, Mr. Procter again dissenting, and the League's investigations were necessarily suspended. To test the scope and meaning of this minute the League on July 23 made a written request for permission to examine certain records clearly covered by the terms of the letter of November 2nd. This was refused after a long delay and several inconclusive replies on the part of the Commission. The undersigned had been meantime appointed a Special Committee to take such further action on behalf of the League as might seem appropriate in the premises; as soon as informed of the Commission's definitive refusal, we addressed it the following letter:

NEW YORK, September 12, 1900.

TO THE UNITED STATES CIVIL SERVICE COMMISSION,

GENTLEMEN :

On July 23rd last, the Secretary of the National Civil Service Reform League, Mr. George McAneny, requested permission for a representative of the League to examine such records of the Commission as would show :

“(1) The number of persons appointed from eligible lists to competitive positions in the several Executive Departments and offices during the period from May 29, 1899, to December 31, 1899.

“(2) The number of persons appointed under temporary certificates to competitive positions during the same period.

“(3) The number of persons appointed to excepted positions not subject to non-competitive examination during the same period.

“(4) The names of persons holding positions in the Internal Revenue and Custom services (excepting storekeepers and gaugers) who have been appointed since May 29, 1899, or who were appointed prior to that date and examined after it, showing in each case, (a) the date of appointment or nomination, (b) the date (where entered) of the request of the Department for examination, (c) the date of examination and (d) the rating received in percentage.”

At the same time Mr. McAneny further requested on behalf of the League that its representative might be permitted to ascertain whether six specified persons were “still in the Customs Service; if not, at what dates they were separated therefrom.”

On November 2, preceding this request, you had informed the League that its agents would be allowed access to your records, including such as would show, *inter alia* :

“1. Figures and statistics relative to the operation of the civil service act and rules as derived from the periodical reports of appointing officers.

“2. The names of persons appointed, promoted or transferred to, or reinstated in, or removed or resigned from positions in the classified service.”

Prior to the incident leading to the correspondence, of which your letter of November 2 formed part, the Commission had acted consistently upon a principle thus stated by your President in an official minute :

“Nothing so much fosters the spoils system as secrecy in the administration of patronage. . . . . People have a right to know what their officials are doing, and if the records are closed to their inspection they will imagine evils which do not exist.”

In the language of its Eighth Report, published during the administration of President Harrison by Messrs. Charles D. Lyman (now Appointment Clerk of the Treasury Department), Theodore Roosevelt (now

Governor of New York and candidate for the Vice-Presidency) and Hugh S. Thompson :

“ One of the chief aims of the Commission is to keep the public thoroughly informed of the workings of the law, . . . . to keep the public confident of the honesty with which the law is administered.” . . . .

“ The books and records of the Commission and of all the local Boards are open to any responsible person. . . . . No fraud can be committed without leaving a record by which it can be found out.”

Investigations made by the League into the immediate effects of the President's order of May 29, 1899, which was the first act of any President since the enactment of the Civil Service Law whereby the application of the Merit System to the Federal Service was sensibly curtailed, led on June 13, 1899, to the discovery that a majority of the present Commission appeared to dissent from the views thus expressed by Messrs. Lyman, Roosevelt and Thompson, and that the Commission, as well as the President, had seemingly adopted a new policy.

Whatever may have been the League's regret at this change in the Commission's course, it adapted its action to the views expressed in the Commission's letter of November 2, above quoted. The information for which it subsequently asked, from time to time, was precisely such as the Commission had then announced itself ready to afford; moreover, in obtaining this information, it was careful to guard against imposing any expense on the Government or interfering in any wise with the current work of the office. On July 23, it requested leave to ascertain, at its own cost, from the very records mentioned in the Commission's letter of November 2, certain facts which were evidently calculated to shed light upon the operation of “ the Civil Service Act and Rules ” since the President's order of May 29, 1899. But this request, after a long delay, has been finally refused, and, consequently, at a joint meeting of the General and Executive Committees of the League we were directed to lay before you and the public, appropriate representations respecting this refusal.

We submit that officers of the United States, whatever their rank or duties, are servants of the American people; that they receive the people's pay and spend the people's money; that their business is to give effect to the people's will and protect the people's interest; and that from their masters they have no proper secrets; what they do or leave undone, in the work they are employed or paid to do, concerns all Americans and can rightfully be hidden from none. To this elementary principle of free government there are, indeed, certain recognized qualifications, justified by the exigency of war or diplomacy, or the avoidance of needless publicity for scandalous or confidential matters. With these, however, we have no concern, for, in the present case, no such considerations apply; the information asked relates to no secret of State, to no question of individual morals or private life. The League wishes to discover, and, if need be, to publish, results of certain action on the part of the President, action taken in the discharge of his official duty; these are facts which in the public interest ought to be made known

just as soon as they can be stated with certainty. We submit that your refusal to permit the League's representative to examine public records, creates a gratuitous hinderance to the people's knowing the truth as to the conduct of their own officer.

In view of these very serious considerations, we hope that you will rescind your recent action on this subject, and remain,

Yours very respectfully,

CHARLES J. BONAPARTE, EDWARD CARY, FREDERICK L. SIDDONS,  
*Special Committee, National Civil Service Reform League.*

This letter led to further correspondence as follows:

UNITED STATES CIVIL SERVICE COMMISSION.

WASHINGTON, D. C., September 28, 1900.

Messrs. CHARLES J. BONAPARTE, EDWARD CARY, and  
FREDERICK L. SIDDONS,

*Special Committee, National Civil Service Reform League,*

GENTLEMEN :

This Commission is in receipt of your communication of September 12, transmitted by the Secretary of the National Civil Service Reform League, submitting certain statements concerning the furnishing of information to your League by the Commission. Reply to your letter has been delayed in order to enable the Commission to determine to what extent information had been furnished on request of the Secretary of your League in the past.

Apparently your communication is the result of entire misapprehension, as this Commission is, and always has been, in full harmony and accord with what is said and quoted in your letter respecting the desirability of the widest possible publicity concerning the operation of the civil service law and rules and the results of the work of the Commission; and the Commission knows of no action on its part which, expressly or by any implication, could be regarded as contrary to these views, and is not aware of any change of policy whatever in this respect; on the contrary, the present Commission has gone further in the direction of publicity than any previous Commission, notably in the opening to persons in interest of registers which had previously been kept secret, so that every appointment thereafter might be thoroughly scrutinized in order to determine whether the law and rules in this respect were honestly and fairly administered, and a much wider diversity and amount of information has been published in the annual reports of this Commission than heretofore. Moreover, the records of the Commission show that all of the great amount of information requested by the Secretary of your League since June 13, 1899, the date you allege as the beginning of a change of policy, has been furnished as promptly as the condition of the Commission's business and the status of the matters involved would permit, with the single exception of the last request made at the end of his letter under date of July 23, 1900, for information concerning the continuance of six persons in the customs service, which request was evi-

dently overlooked because not enumerated with the requests contained in the body of his letter. As soon, however, as this item was brought to the attention of the Commission, steps were taken to furnish the information.

On July 14, 1900, the Commission adopted the following minute :

“ Ordered, That hereafter whenever a request is received for information concerning the Commission’s work, before the data for such information has been prepared for the annual report or for other public use, if the information desired be such as to justify it, the Commission will furnish such official information and facts as may be in its possession, as well as copies of its files and records, to such outside parties or organizations as request the same, so far as the good of the public service and the limited force of employees of the Commission will warrant.

“ It is further ordered, That hereafter no person who is not a member of the Commission’s force shall have access to its files and records for the purpose of preparing information for any unofficial purpose.”

It will be seen that this minute again emphasizes the purpose of the Commission to continue to furnish all possible information to the public, so far as the good of the service and its limited force of employees will warrant. At the same time, because of the embarrassment the Commission has suffered through the action of persons not responsible to it who have from time to time obtained almost unrestricted access to its files and records, including some which at the time were of a nature which the public interest demanded should not then be made generally known, and because of the failure of the precautions which the Commission had taken to prevent improper use of the privileges granted such persons, and also the undue interference with the transaction of its current business, it was ordered that no persons not members of the Commission’s force should have access to its files and records in order to prepare information for unofficial purposes. This latter provision does not in any way curtail or abridge the opportunity to secure all proper information concerning the operation of the civil service law and rules, and it is believed that through it the Commission will be relieved from the embarrassment and interference with its work heretofore referred to, as well as the further liability of wide misconception and misrepresentation in regard to its work occasioned by the many errors which have been made heretofore by persons engaged in compiling information who had little or no knowledge of the Commission’s work and consequently were prone to fall into egregious errors concerning it, thus prejudicing and rendering practically valueless their results.

Notwithstanding the statements made by the Secretary of your League, the Commission’s files and records show that substantially all of the information proper to be furnished to the public which was requested in his letter of July 15, had already been furnished to him, and therefore he was advised, under date of September 8, that because this information had been furnished and because of the urgency of the public business,

the transaction of which had been and would again be interfered with by the presence of your agent, "The Commission must therefore at present decline to permit your representative to consult the records as requested in your letter of July 23." Inasmuch as your Secretary again requested, under date of September 12, that the League's representative be given access to the files and records in order to again compile the information, he was informed under date of September 20, in pursuance of the minute of July 14 above quoted, how the information desired might be secured without causing the public interest to suffer and at the same time furnishing information entitled to all the credit given to that officially promulgated by the Commission, as it would be prepared by the persons most competent and best qualified to accurately and correctly compile it.

In conclusion, this Commission desires it to be distinctly understood that the files and records showing the operation of the civil service law and rules and of the results of the Commission's work continue to be open to the public in the same manner and to the same degree as formerly, and that any person desiring information on any specific point, not incompatible with the public interest, will be promptly furnished therewith, and will be shown the file and record in relation thereto if desired; but, in the discretion vested in the Commission as the responsible custodian of its files and records, it has determined, for the reasons herein stated, that it is clearly in the public interest that this publicity be given in the manner herein described, and that it clearly is not in the public interest to allow unrestricted and indiscriminate access to its files and records.

By direction of the Commission.

Very respectfully,

JOHN B. HARLOW,  
*Acting President.*

NEW YORK, October 18, 1900.

TO THE UNITED STATES CIVIL SERVICE COMMISSION,  
WASHINGTON, D. C.

GENTLEMEN:

Your letter of September 28, in reply to ours of the 12th, with reference to the right of access to the Commission's records, informs us that:

"The Commission is and always has been in full harmony and accord with what is said in the Committee's letter . . . and knows of no action on its part which expressly or by implication could be regarded as contrary to these views, or of any change of policy whatever in this respect."

This information is very gratifying, but we must add that it is no less surprising. The policy of the Commission before the President's Order of May 29, 1899, was described by Messrs. Lyman, Thompson and Roosevelt, as follows:

"The books and records of the Commission and of all the local Boards are open to any responsible person. No fraud can be committed without leaving a record by which it can be found out."

In the minute of July 14, 1900, to which you refer, the Commission declared its purpose to deny thereafter access to *any* of its records to *all* persons "not members of the Commission's force" and added :

"All orders or minutes heretofore made by the Commission in conflict with the provisions of this order, are hereby revoked."

This latter part of the minute you did not quote.

Until enlightened by your letter, we certainly regarded this action as indicating a definitive abandonment of the policy of Messrs. Lyman, Thompson and Roosevelt ; and no less certainly we were not alone in that opinion, for, on June 13, 1899, when, for the first time in its history, the Commission denied to the National Civil Service Reform League access to its files, the President of the Commission (Mr. Proctor) said in a dissenting minute:

"The vote of the Commission to keep its records secret is an absolute reversal, for the first time in the history of the Commission, of a policy which has been universally commended as wise."

"It has been the constant public boast of the Commission that its records are subject to inspection and that the inspection is invited. I can conceive of nothing which is calculated to do more damage to the work of the Commission, and its power for good, than the refusal to permit access to files of cases in which action has been completed."

Since, however, you say that "misapprehension" exists as to the consistency of the present with the past practice of the Commission in this respect, we respectfully suggest that you can readily remove this "misapprehension :" your predecessors, Messrs. Lyman, Thompson and Roosevelt, told the public: "The books and records of the Commission . . . are open to any responsible person ;" you have only to tell the public that this is still true.

You further tell us that :

"Notwithstanding the statements made by the Secretary of your League, the Commission's files and records show that substantially all the information proper to be furnished to the public, which was requested in his letter of July 23, had already been furnished to him."

This passage in your letter has caused the delay in its acknowledgment by leading the Secretary of the League to request that we further examine his somewhat voluminous correspondence with the Commission before replying.

While we do not understand that the question as to what had or had not been secured by the League at the time of previous examinations of the records has any pertinence to the question really at issue, we feel that the facts in this regard may be briefly stated : Having obtained limited access to the files of the Commission in November, 1899, after a

tedious delay of five months, the League ascertained and tabulated facts which showed, with certain omissions, the practical working of the President's order of May 29, 1899, from its date to January 1, 1900. It was subsequently decided to extend this investigation until the results of a year's application of the order could be shown, and, at the same time, both to complete and verify the work already done, and to take up certain additional subjects. Before the new work was finished however, the Commission's minute of July 14 was adopted. It was this that led to the Secretary's letter of July 23, asking directly for access to records clearly covered by the Commission's concession of November, 1899.

The particular omissions to be covered in completing tables were not specified for the reason that this, very naturally, was not understood to be necessary. The letter was met with a repetition of the denial of access contained in the minute of July 14. Aside from the question of pertinency, we do not see why the Commission should cite the incident of July 23 as a reason for its action taken nine days previously; nor can we agree with the Commission if it holds either that "substantially all the information" to be gained by *twelve* months' experience is afforded by the first *seven*, or that such information can be "proper to be furnished to the public" when it relates to the year 1899, and improper when it relates to the year 1900.

It so happens that the additional enquiry referred to was undertaken by reason of a conversation of our Secretary with the President himself. The results of the League's investigation, although incomplete, were so startling that Mr. McAneny, by direction of the Executive Committee, obtained an audience of the President, and asked if he would give consideration to a memorial, pointing out in detail the deplorable consequences of his Order, and praying for its revocation. The President replied courteously that he would *consider* anything the League submitted, but that he regarded any criticism of the Order's working as premature until it had been given a fair trial. The League then determined to await the expiration of the full year from May 29, 1899, before preparing its intended memorial, and circumstances caused some further delay.

Whilst the Commission has never said that the agents employed by the League in its investigations are not "responsible persons," or that in any specified instance the work of the Commission has been impeded by their presence, the language it has used might well give this impression to a careless reader. We deem it proper, therefore, to mention in this letter that the two gentlemen, Mr. F. B. Tracy and Mr. George A. Warren, successively employed by the League for these purposes, are, as you well know, men, not only of high standing and excellent reputation, but also exceptionally competent for this particular work, and that tables originally prepared by them for the League are published, with certain additions, among the appendices to your Sixteenth Annual Report. The League has been glad to furnish copies of such tables to the Secretary of the Commission, in reciprocation of his personal courtesies, whenever they have been desired, and has been gratified to learn that they have proved practically useful.

In conclusion, permit us to say that the Commission's professed readiness to furnish such measure of information as "it is clearly within the public interest to give" and "so far as the good of the public service and its limited force of employees will warrant" is, again, quite beside the question at issue. Everyone knows that you have confidential records touching the character and antecedents of applicants for public office; to these the League has never asked or desired access. Your remaining records, in the words of Messrs. Lyman, Thompson and Roosevelt, of right "are open to any responsible person", and for this freedom of access no substitute will, we venture to say, be accepted as sufficient by public opinion. We therefore respectfully renew the request of our previous letter, that we may among other things, complete, in accordance with the suggestion of the President, an accurate and adequate statement of the operation and consequences of his order of May 29, 1899, after it had been given a fair trial.

We remain, Gentlemen, Yours very truly,

CHARLES J. BONAPARTE, EDWARD CARY, FREDERICK L. SIDDONS.

*Special Committee, National Civil Service Reform League.*

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UNITED STATES CIVIL SERVICE COMMISSION,

WASHINGTON, D. C., Oct. 25, 1900.

Messrs. CHARLES J. BONAPARTE, EDWARD CARY and  
FREDERICK L. SIDDONS,

*Special Committee, National Civil Service Reform League.*

GENTLEMEN :

This Commission is in receipt of your communication under date of October 18, 1900, in reply to the Commission's communication under date of September 28, 1900, and respectfully advises you that, after a careful reading, your communication does not seem to contain or advance any matters upon which the views of the Commission are not already expressed in its communication under date of September 28, 1900.

As to your request contained in your communication of October 18, that you "may, among other things, complete, in accordance with the suggestion of the President, an accurate and adequate statement of the operation and consequences of his order of May 29, 1899, after it had been given a fair trial," your attention is again respectfully invited to the Commission's communication of September 28 and to the Commission's communication to your Secretary under date of September 20, 1900, wherein it is pointed out in detail how all proper information which is obtainable from the Commission's records, and which you may desire in the compiling of any statements which you may be preparing or for use in connection with any investigations which you may be prosecuting, may, in the opinion of the Commission be best and most satisfactorily obtained, and wherein it is stated that, in accordance with the method pointed out, the Commission will always be glad to consider re-

quests from your Secretary for such information as the League may desire.

Therefore, if you, your Secretary, or any other member of your League, will kindly indicate just what information is desired at this time, the Commission will be pleased to have the same furnished in accordance with its communications of September 20 and September 27.

By direction of the Commission :

Very respectfully,  
JOHN B. HARLOW,  
*Acting President.*

We deem no further comment necessary on the Commission's attitude than is implied in plainly stating it. The Commission offers to let its own employees obtain information for the League from its files ; it refuses to let the employees of the League, to whose character and fitness for such work it has no objection to offer, obtain this information at the League's expense, under whatever reasonable regulations may be needful to prevent interference with the work of the office, no complaint of such interference having ever been made in the past or being made now. The Commission professes its willingness to furnish information 'if the information desired be such as to justify it' and '*so far as* the good of the public service . . . . will warrant,' but its decision on these questions must be made when each application is received and is not to be governed by any such general rules as were set forth in its letter of November 2nd, 1899 ; so that precisely the same data may be furnished at one time and denied at another, or granted to one applicant and refused to the next. Moreover, the information furnished on any subject will be, not necessarily *the whole* truth, as shown by the Commission's records, but the truth thus shown *so far as* in the judgment of the Commission, 'the good of the public service will warrant' its disclosure.

We have said that in our judgment this attitude, when clearly defined, needs no comment, but one word may be fitly said of it in conclusion ; this was not the attitude of the Commission when the present Vice-President elect was one of its members. Then, in the words of the Eighth Report, 'the books and records of the Commission' were 'open to any responsible person' ; now, under the minute of July 14, 'no person who is not a member of the Commission's force shall have access to its files and records' ; then, Mr. Roosevelt and

his colleagues said: 'No fraud can be committed without leaving a record by which it can be found out'; now, such a record may perhaps be left, but whether its exists or not, no one but 'a member of the Commission's force' can know, and whether the fraud shall be found out by the public depends on the Commission's judgment as to *how far* 'the good of the public service will warrant' letting in the light of day. In their Eighth Report, above quoted, the Commissioners then in office spoke like men conscious that they were doing their duty and having the courage born of such consciousness; on the language of the majority of the present Commission we have already declared comment needless.

Very respectfully submitted,

CHARLES J. BONAPARTE,  
EDWARD CARY,  
FREDERICK L. SIDDONS,  
*Special Committee.*





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